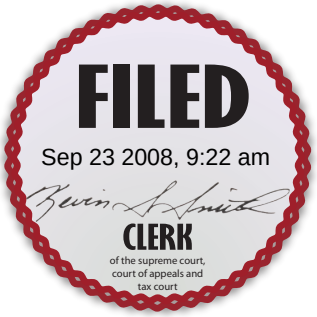

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IN THE
COURT OF APPEALS OF INDIANA

JAMES BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0803-CR-206
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
The Honorable Steven Rubick, Magistrate
Cause No. 49G04-0708-FB-176646

September 23, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James Brown ("Brown") was convicted in Marion Superior Court of Class B felony burglary and Class B misdemeanor public intoxication. He was sentenced to an aggregate term of twelve years. Brown appeals, and raises the issues of:

I. Whether there was sufficient evidence to support his conviction; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On August 28, 2007, Eric Wall ("Wall") returned home to find Brown inside. Wall noticed that the bedroom window had been broken, his stereo had been placed near the front door, and a number of Cokes had been knocked onto his bed. Wall ordered Brown to leave his house. Brown left the house and returned to his home across the street.

Ursula Harris, Brown's sister, confronted him in his house. She noted an empty bottle of whiskey and a number of beer cans. Harris believed that Brown was intoxicated.

Wall called the police. The police arrived and detained Brown as he stepped outside. The police noted that Brown's breath smelled of alcohol, his eyes were watery and bloodshot, his speech was slurred, and he was unsteady on his feet.

On August 30, 2007, the State charged Brown with Class B felony burglary, Class A misdemeanor battery, and Class B misdemeanor public intoxication. Brown testified, at the bench trial, that he had been drinking on his front porch, that he didn't remember

being arrested and placed in a police car, and he did not recall being in Wall's house and did not remember seeing or talking to Wall.

Following a bench trial, Brown was found guilty of Class B felony burglary and Class B misdemeanor public intoxication but not guilty of Class A misdemeanor battery. The trial court sentenced Brown to twelve years for the Class B felony burglary and thirty days for the Class B misdemeanor public intoxication, to be served concurrently. Brown appeals his conviction and sentence for burglary.

I. Sufficient Evidence

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt then the circumstantial evidence will be sufficient. Id.

Brown argues that the evidence presented at trial is insufficient to support his conviction for burglary alleging his intoxication negated the specific intent element required under Indiana Code section 35-43-2-1(2004). Fortunately, voluntary intoxication is not a defense in Indiana and Brown does not argue that his intoxication was involuntary. Indiana Code section 35-41-2-5 (2004) provides, "Intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in

determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of IC 35-41-3-5 [setting forth the defense of involuntary intoxication]." Our supreme court upheld this statute as constitutional in Sanchez v. State, 749 N.E.2d 509 (Ind. 2001).

The Sanchez court held that the voluntary intoxication statute, by prohibiting the consideration of voluntary intoxication in determining the existence of a "mental state that is an element of the offense," eliminated the requirement that the defendant act "knowingly" or "intentionally." 749 N.E.2d at 517. The court rejected the notion that the voluntary intoxication statute eliminated the requirement of Indiana Code section 35-41-2-1 that voluntary actions are necessary for culpability. Sanchez, 749 N.E.2d at 517. The court then stated:

> even if there may be an act rendered involuntary by intoxication, itself a doubtful premise in most circumstances, *the legislature has decreed that the intoxication, if voluntary, supplies the general requirement of a voluntary act.* That is sufficient to place the voluntarily intoxicated offender at risk for the consequences of his actions, even if it is claimed that the capacity has been obliterated to achieve the otherwise requisite mental state for a specific crime.

Id. at 517 (emphasis added). The evidence that Brown was intoxicated does not negate the specific intent element required under Indiana Code section 35-43-2-1.

II. Inappropriate Sentence

Brown also argues that his twelve year sentence was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); Marshall v.

State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, "[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Id. at 490.

The sentence under review is not inappropriate in light of the nature of the offense and the character of the offender. The nature of the offense in not particularly troubling but the character of the offender is certainly of concern. Brown has a history of substance abuse starting at the age of eight. Now at the age of forty-one, he has taken few, if any, steps towards substance abuse treatment. Additionally, since his first offense in 1983, he has not taken advantage of programs through the court system to deal with his substance abuse problem. While Brown's attendance at AA meetings is a positive step, he admitted to using marijuana four or five times a week and to cocaine use an average of two times a month. Brown also has an extensive criminal history that includes numerous property crimes. Accordingly, we conclude that Brown's sentence is not inappropriate based on the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and BROWN, J., concur.